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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HENRY E. ARGASINSKI

Appeal 2008-3200
Application 09/923,645
Technology Center 2400

Decided:¹ February 24, 2009

Before ALLEN R. MACDONALD, STEPHEN C. SIU,
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the
Examiner's rejection of claims 2-9, 11-13, 15-17, and 21-23. Claims 1, 10,

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

14, and 18-20 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing for this appeal was conducted on February 12, 2009. We affirm.

STATEMENT OF THE CASE

THE INVENTION

Appellant's invention relates to systems and methods of conveying retail information to consumers. More particularly, Appellant's invention relates to a system and method for virtual window shopping. (Spec. 1, para. [0001]).

Independent claim 21 is illustrative:

21. A method comprising:

transposing an actual image of a group of adjacent storefronts along a city block as a navigable image within an internet site;

allowing a user to scroll a point of view of said navigable image left or right within said internet site by moving said point of view of said navigable image in a direction along said city block while maintaining said point of view directed toward said group of adjacent storefronts; and

providing customer selectable links within said navigable image.

PRIOR ART

The Examiner relies upon the following references as evidence in support of the anticipation rejection:

| | | |
|-----------------------|--------------------|---------------------|
| Ferreira | US 2001/0034661 A1 | Oct. 25, 2001 |
| Ferreira ² | US 60/182,282 | filed Feb. 14, 2000 |

THE REJECTION

Claims 2-9, 11-13, 15-17, and 21-23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ferreira.³

² We note that the Ferreira 60/182,282 reference is the provisional application for the Ferreira utility patent application publication, US 2001/0034661 A1. We consider Ferreira's 60/182,282 provisional application available as prior art in accordance with *Ex parte Yamaguchi*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/fd074412.pdf>, slip op. at 17 (BPAI Aug. 29, 2008) (precedential) ("In sum, the statutory scheme of Title 35 indicates that Congress intended for "applications for patent" under 102(e) to apply to both regular utility applications and provisional applications, particularly when considering §§ 111(b) and 102(e) together. As a published "application for patent" under this statutory framework, *a provisional application — like a regular utility application — constitutes prior art for all that it teaches* and, as such, promotes the progress of the useful arts.") (Emphasis added).

³ Claims 21, 22, and 23 are the only independent claims on appeal.

GROUPING OF CLAIMS

In the principal Brief, Appellant repeats the same argument for each independent claim on appeal. We will, therefore, treat claims 2-9, 11-13, 15-17, and 21-23 as standing or falling with representative claim 21. *See* 37 C.F.R. § 41.37(c)(1)(vii).

APPELLANT'S CONTENTIONS

Regarding each claim on appeal, Appellant makes the following contentions:

The Ferreira reference does not teach or suggest scrolling a point of view of a navigable image left or right within an internet site by moving the point of view in a direction along a city block while maintaining the point of view directed toward a group of adjacent storefronts of the city block. Rather, Ferreira discloses simple rotational movement of a camera around a stationary point. The Examiner's argument that the rotational camera movement of Ferreira is anticipatory confuses movement of the "point of view" along a city block with rotational movement of a camera on a stationary point. In Ferreira, the point of view is fixed during camera rotation. The point of view is not moved left or right "along a city block." The Examiner's interpretation ignores the claim's recitation of movement of the "point of view" in a direction "along a city block and incorrectly equates the recited movement of the "point of view" with Ferreira's rotational camera movement.

(App. Br. 7-8).

EXAMINER'S RESPONSE

The Examiner maintains that the limitations argued by Appellant are disclosed by the Ferreira provisional application (Ans. 9-10). The Examiner also maintains that the Declaration received on January 24, 2005 under 37 C.F.R. §1.131 is ineffective to overcome the Ferreira reference (US. Pat. PUB No. 2001/0034661), since the effective date of Ferreira is February 14, 2000, according to provisional application 60/182282 (Ans. 11).

ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal:

Has Appellant shown that the Examiner erred in finding that the Ferreira provisional reference US 60/182,282 discloses the argued limitations of scrolling a point of view of a navigable image left or right within an Internet site by moving the point of view in a direction along a city block while maintaining the point of view directed toward a group of adjacent storefronts of the city block?

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citation omitted). “Anticipation of a patent claim requires a finding that the claim at issue

‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

“[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000).

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellant’s Briefs to show error in the Examiner’s proffered *prima facie* case.

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of facts (FF) that are supported by a preponderance of the evidence:

THE FERREIRA PROVISIONAL US 60/182,282 REFERENCE

1. Ferreira discloses block-by-block navigation of a city block, as disclosed in paragraph 1 and Figure 2 (p. 5).
2. Ferreira discloses that “[t]he central picture is not static. Far from it. Web-surfers will be able to use their mouse (or the arrows on their keyboard) to move the camera around. Simply clicking on the image and holding down either the left or right

mouse button will alter the camera's perspective and create the appearance of movement. Camera functionality will include: pan left, pan right, pan up, pan down, or any combination thereof, and zoom in and out." (Ferreira provisional 60/182,282, p. 5, ¶2).

ANALYSIS

We decide the question of whether Appellant has shown the Examiner erred in finding that the Ferreira provisional reference US 60/182,282 discloses the argued limitations of scrolling a point of view of a navigable image left or right within an Internet site by moving the point of view in a direction along a city block while maintaining the point of view directed toward a group of adjacent storefronts of the city block.

As acknowledged by Appellant "[i]n Ferreira, a user may rotate the camera to move a viewing window left or right. *See* Ferreira utility app., p. 6, [0071]; Ferreira provisional app., p. 5." (App Br. 14, ¶ 4). Appellant argues forcefully that "[i]n Ferreira, however, the point of view is fixed and stationary while it rotates." (*Id.*). Appellant contends that the Examiner has incorrectly equated the fixed, rotating point of view disclosed by Ferreira with Appellant's claims that recite movement of the "point of view" in a direction "along a city block." (App. Br. 15, ¶1).

Claim Construction

We begin our analysis by broadly but reasonably construing the claimed “point of view” in light of Appellant’s Specification. *See In re Bigio*, 381 F.3d 1320, 1324. For convenience, we reproduce the pertinent portion of paragraph [0015.1] of the Specification here:

Storefronts may be represented through three-dimensional (“3-D”) photographs or graphically, and stitched together to form a city block or section of a shopping mall or plaza. This representation would have the ability to move the point of view from left to right (or reverse) to give the viewer an impression of walking down a street or strolling through a mall.

(Spec., para. [0015.1] (added by amendment)).

We note that Appellant’s Specification, in pertinent part, provides for the “ability to move the point of view from left to right (or reverse) to give the viewer an impression of walking down a street or strolling through a mall.” (*Id.*). In particular, we note that each of Appellant’s independent claims recite scrolling (or moving) said point of view of said *navigable image* (claims 21-23). Thus, as claimed, it is the point of view of the *navigable image* that changes.

Therefore, as a matter of claim construction, we find nothing in Appellant’s claims that requires the point of view to be limited to the point of view of a *physical camera* that is moved along a city block while maintaining a perpendicular view angle to the city block (as imputed by Appellant’s arguments). There is no perpendicular or other angle claimed, nor has Appellant claimed a moving camera. To the contrary, Appellant’s

independent claims merely require that the point of view of the *navigable image* be moved while *being directed toward* a group of adjacent storefronts of the city block.

We note that Appellant could have amended the claims during prosecution to limit the movable point of view to a perpendicular angle with respect to the city block. Because “applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee.” *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citing *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)).

This reasoning is applicable here. Therefore, we find Ferreira’s disclosure of using a mouse to pan a camera left (or right) to navigate a city block (FF 1-2) would have given the viewer an impression of “walking down a street” in a manner consistent with that described in Appellant’s Specification. (See Spec., para. [0015.1]). Accordingly, we find the disclosure of the Ferreira provisional reference (FF 1-2) meets the argued limitations of scrolling a point of view of a navigable image left or right within an Internet site by moving the point of view in a direction along a city block while maintaining the point of view directed toward a group of adjacent storefronts of the city block.

CONCLUSION

Based on the findings of facts and analysis above, we conclude that Appellant has not established that the Examiner erred in rejecting representative claim 21 (and claims 2-9, 11-13, 15-17, 22, and 23 that fall

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therewith) as being anticipated by Ferreira's provisional application 60/182,282 under 35 U.S.C. § 102(e).

DECISION

We affirm the Examiner's decision rejecting claims 2-9, 11-13, 15-17, and 21-23.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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